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Applicant:	White	Examiner:	Alvarez, Raquel
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REPLY BRIEF FOR APPELLANT

Responsive to the Examiner's Answer mailed September 20, 2004 for the above-captioned application (hereinafter, the Examiner's Answer), the present Reply Brief is respectfully submitted.

(1) **Real Party In Interest**

See the Brief.

20 (2) **Related Appeals And Interferences**

Since the Examiner's Answer at page 2 item (2) suggests that the Examiner did not see the statement in the Brief For Appellant mailed March 15, 2004 (hereinafter, the Brief) at page 1 item (2), Appellant hereby submits the following statement, which is true to the best knowledge and belief of Appellant, Appellant's legal representative and Appellant's assignee: there are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal.

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Name Jessica L. Olson

Signature Jessica L. Olson

(3) Status of Claims

The Examiner's Answer admits that the Brief correctly sets forth the status of the claims.

(4) Status Of Amendments After Final

It remains the case that no amendment has been filed subsequent to final rejection.

10 **(5) Summary Of Invention**

The Examiner's Answer admits that the Brief correctly sets forth a summary of invention.

(6) Issues

The Examiner's Answer admits that the Brief correctly states the issues on appeal.

(7) Grouping Of Claims

20 Claims 16-181, 184, 191-195 and 200-202 do not stand or fall together for any ground of rejection. See the reasons set forth below.

(8) Claims Appealed

The Examiner's Answer admits that the Brief correctly sets forth the claims appealed.

(9) Argument

30 **General.** The Examiner has not identified which portions of the Examiner's Answer apply to which issues on appeal. Consequently, it has been difficult for Appellant to guess which portions of the Examiner's Answer are meant to address which issues on

appeal. The new matter added by the Examiner on pages 9-16 of the Examiner's Answer is addressed below after the issues on appeal have been discussed.

Grouping of Claims. The Examiner's Answer incorrectly asserts that "[t]he rejection of claims 16-181, 184, 191-195 and 200-202 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7)."

As suggested by the Examiner, Appellant has reviewed 37 CFR 1.192(c)(7), which begins with the phrase "[f]or each ground of rejection which appellant contests and
10 which applies to a group of two or more claims".

Appellant has carefully reviewed the office action mailed November 18, 2003 (hereinafter, the Final Office Action) and has been unable to locate therein a ground of rejection asserted by the Examiner with respect to all of the claims in the group comprised of claims 16-181, 184, 191-195 and 200-202. This is not particularly surprising, since claims 65-123, 129, 137-140, 163-166 and 168 have already been allowed and claims 1-64, 124-128, 130-136, 141-162, 167 have already been withdrawn and/or cancelled.

Consequently, 37 CFR 1.192(c)(7) is not applicable to the surprising new suggestion in the Examiner's Answer that claims 16-181, 184, 191-195 and 200-202 stand or fall
20 together.

In an attempt to understand the Examiner's odd new grouping, Appellant considered the possibility that the Examiner had meant to type "169" and had accidentally typed "16" instead (so that the group would at least be limited to claims that had not already been allowed, withdrawn or cancelled). However, after careful examination of the Final Office Action, Appellant has been unable to find any one ground of rejection which applies to all of claims 169-181, 184, 191-195 and 200-202.

Appellant respectfully requests that the Board adopt the grouping of claims set forth in the Brief because: (i) the odd grouping suggested for the first time in the Examiner's Answer does not correspond to a single ground of rejection; (ii) the Examiner has not
30 objected to any of the claim groupings suggested by appellant, (iii) the Examiner has not objected to any of Appellant's assertions in the Brief that specified claims do not stand

or fall together or to any of the corresponding explanations provided by Appellant in the Brief, (iv) each claim grouping set forth in the Brief corresponds to a single issue on appeal and the Examiner has admitted that the Brief correctly sets forth the issues on appeal, (v) most of the claim groupings set forth in the Brief correspond to groupings used by the Examiner in the Final Office Action; and (vi) the Examiner's discussion in the Final Office Action set forth different grounds for rejecting each grouping of claims discussed by the Examiner in the Final Office Action.

The first issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **first** issue on appeal is whether the Examiner is justified in rejecting claim 196 on the grounds that a data stream is non-statutory subject matter because the data therein does not impact functionality to the data stream, regardless of the content of the data stream. The Examiner's Answer at page 12 also admits that independent claim 196 clearly recites a "useful, concrete and tangible result".

See the discussion of the Examiner's proposed two prong technological arts test below at the second issue on appeal.

For the reasons set forth above and in the Brief, reversal is requested.

The second issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **second** issue on appeal is whether the Examiner is justified in rejecting claims 169-171, 173-177, 179, 182-183, and 184-208 under 35 U.S.C. 101 on the grounds that those method claims are non-statutory because they fail to satisfy several undefined requirements proposed by the Examiner, despite: (a) such method claims' being directed to a process as expressly permitted in 35 U.S.C. 101; (b) such claims' being expressly limited to methods for operating and/or interacting with offer matching and/or information publishing systems; (c) the specification's disclosure of technology permitting one reasonably skilled in the art to practice the methods set forth in the claims; and (d) 35 U.S.C. 101's not requiring that a claim for a method (d-1) include a process (somehow distinct from the claimed method itself) for carrying out the invention, (d-2) include structural means for carrying out the invention, (d-3) be implemented with

specific automated computer apparatus, (d-4) be in the "technological" or "useful" arts, or (d-5) affect or define the technology.

The Examiner's Answer at page 12 admits that independent claims 169, 173, 177, 179, 182, 184, 185, 191, 196, 197, 203 and 204 (i.e., all of the independent claims in the claim group for the second issue on appeal other than claim 187) clearly recite a "useful, concrete and tangible result". Claim 187 recites the following useful, concrete and tangible results, among others: "the offer matching system's executing the first offer at least in part against the second offer in accordance with a set of rules that govern the operation of the offer matching system" and "in response to the second request, communicating from the offer matching system to the first disclosee a first response comprising: a first data item responsive to the first request and a first digital signature from the offer matching system."

However, in the Final Office Action at page 11, item 11, and in the Examiner's Answer at page 9, the Examiner suggests that "the claim recites no structural limitations (i.e., computer implementation)." This is untrue as each claim listed above, including 187, recites the limitation of "which system includes without limitation a computer apparatus." Thus each claim does indeed recite the structural limitation of a computer implementation. In addition, as Appellant has submitted in the Appeal Brief at page 18, that the obvious meaning of the phrase "system (which system includes without limitation a computer apparatus)" is that the system referred to must contain a computer apparatus but is not limited solely to systems that contain only a computer apparatus. The clear purpose of the phrase "without limitation" in this context is to negate any potential confusion that a system which contains both a computer apparatus and something else is outside the scope of such claims.

In the unpublished Board of Patent Appeals and Interferences case *Ex parte Bowman*, the Board decided that the "Examination Guidelines for Computer-Related Inventions" did not apply for the sole reason that the Appellant in that case had not recited the use of a computer in any of Appellant's claims. See *Ex parte Bowman*, 61 USPQ2D 1669, 1671 (2001). In the present Appeal, the opposite is true. A system including a computer is indeed recited in each of the claims 169, 173, 177, 179, 182, 184,

185, 187, 191, 196, 197, 203 and 204. Therefore the Examination Guidelines for Computer-Related Inventions do apply. These guidelines state:

Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence non-statutory.

Applicant's invention, as recited in the claims discussed above, is not simply a computer program, but is a statutory system which includes without limitation, a computer which interacts with defined processes. Therefore, claims 169, 173, 177, 179, 182, 184, 185, 187, 191, 196, 197, 203 and 204 are within the "technological arts" and are statutorily patentable, because they all are tied to the use of a computer as a part of the system claimed.

For the reasons set forth above and in the Brief, reversal is requested.

The third issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **third** issue on appeal is whether the Examiner is justified in rejecting claims 177 and 178 under 35 USC 112 despite the fact that both claims clearly require both a digital signature and additional security that does not rely upon the digital signature.

In the Final Office Action at page 3, paragraph 4, and in the Examiner's Answer at page 4, the Examiner asserts that "[i]t is confusing as to if the digital signature is claimed or not."

Appellant is puzzled that the Examiner continues to be confusion about this issue, since the Examiner's Answer at page 2 item 5 admits that the summary of invention contained in the Brief is correct and that summary states, in relevant part, that "... a **third** embodiment the invention (e.g., claims 177 and 178) includes all elements of the first embodiment plus the following additional elements:

(i) the response [1254] (as described above in the first embodiment) also includes a digital signature that is sufficient to permit a recipient of the response to determine with reasonable certainty whether the reply was sent by the offer matching system and whether the reply has been altered (See the Application at page 29 line 25 - page 30 line 8) and

(ii) the response [1254] is sent [1209] in a manner that is secured without relying upon the digital signature. (See Application at page 11 lines 8-18 and page 36 lines 1-3.)

As contemplated by clause (i) immediately above, claim 177 clause (c)(1)(B) and
10 by claim 178 clause (c)(1)(B), the Application at page 29 line 25 – page 30 line 8 discusses how a digital signature might be used to ensure that an intermediary has not altered a message signed by an offer matching system.

As contemplated by clause (ii) immediately above, claim 177 clause (c)(2) and claim 178 clause (c)(2), the Application at page 11 lines 8-18 discusses using secure sockets layer to secure communications that pass through the Internet and the Application at page 36 lines 1-3 discusses the desirability of using a secure hypertext transport protocol between a client computer and a server computer. Please note that the use of SSL or HTTPS to secure communications over the internet is independent of whether or not such communications happen to contain digital signatures.

20 Despite having carefully and repeatedly read the Final Office Action and the Examiner's Answer, Appellant still does not understand how the Examiner can simultaneously both agree that the relevant embodiment of the invention includes a digital signature as is expressly claimed in claims 177 and 178 and yet remain confused as to whether or not the digital signature is claimed.

Claim 177, step (c), requires "sending ... a reply that: (1) comprises ... a digital signature ... and (2) is sent ... in a manner that is secured without relying upon the digital signature..." Clearly, the text of Claim 177 requires both that the reply comprise a digital signature and that the reply also be secured in a manner that does not rely upon the digital signature.

30 Claim 178, item (c), requires a "means for securely sending a reply ... where the reply: (1) comprises ... a digital signature ... and (2) is sent ... in a manner that is secured

without relying upon the digital signature." Clearly, the text of Claim 178 requires both that the reply comprise a digital signature and that the reply also be secured in a manner that does not rely upon the digital signature.

For example, a reply that includes a digital signature (see for example the discussion in the application at page 29 line 25 - page 30 line 8) could also be encrypted using a method that is completely independent of the digital signature and treats the digital signature simply as part of the plain text that is being encrypted (see for example the discussion of secure sockets layer in the application at page 11 lines 8-18 and the discussion of hypertext transport protocol in the application at page 36 lines 1-3).

10 While it might be unusual both to digitally sign a reply and to secure the same reply in a second manner that does not rely upon the digital signature, Appellant continues to argue that novelty and a lack of obviousness are desirable in a patent claim.

In the Final Office Action at page 11, paragraph 12, the Examiner appears to be admitting that both claims require both a digital signature and some other technique for securing data. While the Examiner might remain confused as to why using both a digital signature and some other technique for securing data is useful, there is no reason why the Examiner's continued confusion about the desirability or utility of the invention should render claims 178 and 179 unpatentable for failing to point out and claim the subject matter which Appellant regards as his invention.

20 The Examiner's Answer at page 12 attempts to fix this problem by suggesting for the first time that claims 177 and 178 are rejected under 112 because they each claim two embodiments of Appellant's invention. While this form of rejection might possibly make sense if either claim required both the presence of a digital signature and the absence of a digital signature, such is not the case. What both claims obviously require is the presence of a digital signature and a second, independent method of providing security that does not rely upon such digital signature. Furthermore, the Examiner has already admitted that the third embodiment set forth in the Brief correctly summarizes a single embodiment of Appellant's invention.

For the reasons set forth above and in the Brief, reversal is requested.

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The fourth issue on appeal. The Examiner's Answer at page 2 item 6 admits that

The **fourth** issue on appeal is whether the Examiner is justified in rejecting claims 169, 173, 179, 182, 184, 185, 187, 191, 197, 203 and 204 under 35 USC 112 despite the fact that all of those claims positively recite that a computer apparatus is included.

In the Final Office Action at page 3 paragraph 1 and in the Examiner's Answer at page 4, the Examiner suggests that such claims are "confusing" and therefore fail to satisfy the second sentence of 35 USC 112 because in their preambles they include the phrase "system (which system includes without limitation a computer apparatus)".

However, by admitting that Appellant's statement of the fourth issue on appeal is correct, the Examiner has admitted that "all of those claims positively recite that a
10 computer apparatus is included."

Furthermore, Appellant submits that the obvious meaning of the phrase "system (which system includes without limitation a computer apparatus)" is that the system referred to must contain a computer apparatus but is not limited solely to systems that contain only a computer apparatus. The clear purpose of the phrase "without limitation" in this context is to negate any potential confusion that a system which contains both a computer apparatus and something else is outside the scope of such claims.

For the reasons set forth above and in the Brief, reversal is requested.

The fifth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **fifth**
20 issue on appeal is whether Adams et al. (3,573,747 hereinafter Adams) suffices to justify rejection of claims 169-176 under 35 USC 102 despite: (a) Adams's failure to disclose (a-1) sending or receiving a request that includes an identifier associated with an offer, (a-2) sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer, and (a-3) in response to such a request, sending a reply that comprises a data item that concerns the offer; and (b) Adams's teaching away from (b-1) using a query/response protocol to communicate information about a particular offer and (b-2) communicating about offers in a manner that does not imply that such communication is from or to a person entitled to receive nonpublic information about such offer.

30 (a) Adams fails to disclose elements of claims 169-176, including elements which the Examiner asserts Adams does disclose. For purposes of the discussion below

it is useful to recall that claims 169, 172 and 173 are the independent claims in this claim grouping.

(a-1) Adams fails to disclose sending or receiving a request that includes an identifier associated with an offer.

(a-1-1) At page 13, lines 7-8 of the Examiner's Answer, the Examiner asserts, without citing any language in Adams, that in the context of Adams's invention, "... the same offer identifier is used by Subscriber B to respond to the offer." [Emphasis added]. Although the Examiner did not bother to indicate which issue on appeal and which element of which claim the Examiner hoped to address with this
10 remark, it seems plausible to assume that the Examiner was addressing this fifth issue on appeal (which is the first to consider a section 102 rejection) with respect to claim 169 (which is the first independent claim in the relevant claim group). The Examiner's failure to use words carefully gives this comment by the Examiner a certain surface appeal. However, for this comment by the Examiner to make sense, it would be necessary to view the offer by Subscriber A as the request of claim 169 and the counteroffer by Subscriber B as the response of claim 169. Yet the claims in this group limit the request in ways that are not satisfied by such an offer. For example:

Claim 169 step (b) requires "receiving a request for information", claim 172 item (b) requires "a means for receiving a request for information" and claim 173 at step (b)
20 requires "sending to the system a request for information". The Examiner has never cited any language in Adams to support the Examiner's view that receiving an offer in accordance with Adams constitutes receiving a request for information. To the contrary, Adams teaches that the system first learns about Subscriber A's offer when Subscriber A submits it to the system and the system then forwards information about Subscriber A's offer to other subscribers. It tortures English past the breaking point to pretend that the system or the other subscribers are receiving from Subscriber A a request for information about Subscriber A's offer when they are actually receiving a description of Subscriber A's offer that was itself supplied by Subscriber A.

(a-1-2) In the Final Office Action at page 4 and in the Examiner's
30 Answer at page 5, the Examiner asserts that Adams, at column 10 lines 1-15 and column 12 lines 1-9, teaches "receiving request for information where the request includes the

first identifier". In the Final Office Action at page 11 paragraph 13 and in the Examiner's Answer at page 13, the Examiner asserts that Adams, at column 10 lines "4-" [sic.] the identifier "20,562" was given to Subscriber A in order to identify his or her offer. Appellant admits that Adams teaches associating an identifier (in this example, "20,562") with an offer. However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning sending a request that includes an identifier associated with an offer to an offer matching system or an offer matching system's receiving a request that includes an identifier associated with an offer.

10 In reviewing the portions of Adams cited by the Examiner, it is important to note that when Adams speaks of a "Reply", he is speaking of a counter-offer that is entered into an offer matching system by a subscriber to that system. Adams is not speaking of a reply to a request for information that includes an identifier associated with an offer. Consequently, Adams's specialized use of the term "Reply" should not be understood to imply any sort of underlying request as contemplated by the above referenced claims.

 When Adams speaks at column 10 lines 1-12 of subscriber B's "Reply" to subscriber A's "Book & Broadcast", Adams means subscriber B's counter-offer to subscriber A's original offer. This is summarized in Adams at column 10 lines 16-19 which explains that after keying in "REPLY" and "20562" (the identifier associated with
20 Subscriber A's original offer), "[n]ext subscriber [B (the "A" in Adams appears to be a typographical error that is confusing but not particularly relevant to this discussion)] strikes key 172 in the BUY shift thus indicating that his reply is an offer to buy securities of X Corporation and is in response to an offer of subscriber A to sell said securities." For a painfully detailed description of how the offer matching system of Adams processes "Book & Broadcast" commands, see Adams at column 15 line 69 - column 19 line 72. For a painfully detailed description of how the offer matching system of Adams processes "Reply" to an offer commands, see Adams at column 26 line 1 - column 27 line 63.

 Similarly, when Adams speaks at column 12 lines 7-8 of "Replies" from
30 subscribers, Adams means counter-offers (entered using "Reply" to an offer commands, see Adams at column 26 line 1 - column 27 line 63, or "Reply" to a Reply commands, see

Adams at column 27 line 64 - column 29 line 69) to previously entered offers (entered with "Book" or "Book and Broadcast" commands, see Adams at column 15 line 69 - column 19 line 72) or to previously entered counter-offers (entered with "Reply" commands or "Reply" to a Reply commands).

In the Final Office Action at page 12 lines 1-3, the Examiner asserts without citing any relevant language in Adams that "Subscriber B using [sic.] the identifier to request information on the identified offer". In the Examiner's Answer at page 13 lines 5-6, the Examiner asserts without citing any relevant language in Adams that "Subscriber B will have to use the same identifier to request information on the identified offer."

10 Conversely, Adams at column 10 lines 1-7 explains that "Subscriber B's reply to the offer of subscriber A is an offer to buy 15,000 shares of X Corporation at 25 1/2." Thus what Adams actually discloses is that in response to Subscriber A's offer to sell, Subscriber B submits an offer to buy -- not information about Subscriber A's offer to sell.

(a-2) Adams fails to disclose sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer.

(a-2-1) In the Final Office Action at page 4, the Examiner asserts that Adams, at column 12 lines 1-9, discloses "the request is received in a manner that does not imply that the request is from a person entitled to receive nonpublic information
20 concerning the first offer". However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning communications with persons not known to be entitled to receive nonpublic information.

When Adams speaks at column 12 lines 2-3 of "anonymity among the various subscribers", Adams means that no subscriber knows which other subscriber entered a particular offer or counter-offer into the offer matching system. Adams does not mean that the offer matching system does not know which subscriber entered and is responsible for each offer or counter-offer entered into the offer matching system. Such an interpretation would mean that offers matched by Adams's system could never be cleared and settled. As support for this interpretation of Adams's use of the term "anonymity",
30 see Adams at, inter alia:

column 1 lines 26-27 (motivation for Adams's invention included requirement for "... a device which would provide the institutional investors and other traders anonymity and confidentiality when they communicated with each other ..." [emphasis added]);

column 5 lines 65-68 (SIGN ON OR OFF key for use "... whenever the subscriber installation ... is to be unused for an extended period of time or when a different individual becomes the operator of the subscriber installation.");

column 6 lines 35-38 ("Furthermore, security passwords corresponding to each subscriber are also stored in the subscriber file and are accessible by the system and
10 authorized persons at the subscriber installation location");

column 9 lines 53-61 ("In general, a Reply is a direct communication to one or more subscribers. The subscribers involved are always completely anonymous to one another, since the system records internally the senders and receivers of all messages and classifies these senders and receivers by code numbers. A subscriber refers only to a reply number or an offer number printed on a message he receives and the system sends his reply to the originator of the message to which he is replying."); and

column 12 lines 18-20 ("In addition to these reference numbers the system also utilizes an authorized subscriber code which allows the system to identify an authorized user of the system.")

20 (a-2-2) In the Final Office Action at page 12 paragraph 14, the Examiner asserts that Adams at column 1 lines 44-47 teaches "it is an object of the invention to provide an apparatus and method of automatically, anonymously and equitable buying and selling fungible properties between subscribers" [emphasis added]. Appellant respectfully submits that the phrase "between subscribers" modifies each of "automatically," "anonymously" and "equitable buying and selling fungible properties". I.e., maintaining anonymity between subscribers is an object of Adam's invention, but maintaining anonymity between the subscribers and the offer matching system is NOT an object of Adam's invention. As a matter of logic, it boggles the imagination to think that Adams contemplates that subscribers will somehow buy and sell fungible properties
30 without anyone (buyer, seller or system) knowing whom the buyer and seller are. In addition, see Adams at, inter alia:

column 1 lines 26-27 (motivation for Adams's invention included requirement for "... a device which would provide the institutional investors and other traders anonymity and confidentiality when they communicated with each other ..." [emphasis added]);

column 5 lines 65-68 (SIGN ON OR OFF key for use "... whenever the subscriber installation ... is to be unused for an extended period of time or when a different individual becomes the operator of the subscriber installation.");

column 6 lines 35-38 ("Furthermore, security passwords corresponding to each subscriber are also stored in the subscriber file and are accessible by the system and
10 authorized persons at the subscriber installation location");

column 9 lines 53-61 ("In general, a Reply is a direct communication to one or more subscribers. The subscribers involved are always completely anonymous to one another, since the system records internally the senders and receivers of all messages and classifies these senders and receivers by code numbers. A subscriber refers only to a reply number or an offer number printed on a message he receives and the system sends his reply to the originator of the message to which he is replying."); and

column 12 lines 18-20 ("In addition to these reference numbers the system also utilizes an authorized subscriber code which allows the system to identify an authorized user of the system.")

20 (a-2-3) In the Final Office Action at page 12 paragraph 14, the Examiner asserts that Adams at column 3 line 9 recites "absolute anonymity is maintained". However, the full sentence in Adams at column 3 lines 6-9 is "As is true with every subprogram within the system, every message is fully documented by being produced simultaneously on the printer/receiving unit of both subscribers and absolute anonymity is maintained". Appellant admits that Adams at column 3 lines 6-9 teaches having a system print messages on the printer/receiving unit of two subscribers without disclosing to either subscriber the identity of the other subscriber. However, the actions described by Adams at column 3 lines 6-9 require as a matter of logic that the system (as opposed to the subscribers) know who both of the subscribers are so that the system can
30 cause messages to be printed on the printer/receiving unit of "both subscribers". Furthermore, at column 12 lines 50-63 Adams teaches that the system sends a summary

of the transactions within the system for a given day to a printer at a banking institution so that the bank can perform "the necessary financial dealings associated with each transaction." Which, as a matter of logic, the bank could not do unless the system knows the identity of the subscribers on the buy and sell sides of each trade and the system discloses those identities to the bank. Consequently, Adams at column 3 line 9 does NOT teach sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer.

(a-3) Adams fails to disclose in response to such a request, sending a reply that comprises a data item that concerns the offer.

10 (a-3-1) At page 13, lines 7-8 of the Examiner's Answer, the Examiner asserts, without citing any language in Adams, that in the context of Adams's invention, "... the same offer identifier is used by Subscriber B to respond to the offer." [Emphasis added]. As discussed above at (1-1-1), it seems plausible to assume that when making this remark the Examiner was addressing this fifth issue on appeal (which is the first to consider a section 102 rejection) with respect to claim 169 (which is the first independent claim in the relevant claim group). For this comment by the Examiner to make sense, it would be necessary to view the offer by Subscriber A as the request of claim 169 and the counteroffer by Subscriber B as the response of claim 169. It would torture English past the breaking point to pretend that Subscriber B, by sending
20 Subscriber B's counter offer to Subscriber A, is: (i) sending a reply comprising a data item that concerns Subscriber A's offer in response to a request for information that includes the identifier for Subscriber A's offer (as required by claim 169 step (c)); (ii) utilizing a means for sending a reply that comprises a data item that concerns Subscriber A's offer in response to a request for information that includes the identifier associated with Subscriber A's offer (as required by claim 172 item (c)); or (iii) causing Subscriber A to receive a reply that comprises a data item that concerns Subscriber A's offer in response to a request for information that includes the identifier associated with Subscriber A's offer (as required by claim 173 step (c)).

Or stated another way, the Examiner is wrong to suggest that Subscriber
30 B's decision to send a counter offer to Subscriber A can be viewed as a response by

(b-2-iii) Adams teaches that "... security passwords corresponding to each subscriber are also stored in the subscriber file and are accessible by the system and authorized persons at the subscriber installation location". See column 6 lines 35-38.

(b-2-iv) Adams teaches using the SIGN ON OR OFF key "... whenever the subscriber installation ... is to be unused for an extended period of time or when a different individual becomes the operator of the subscriber installation." See column 5 lines 65-68.

(b-2-v) Adams teaches that communications about offers are made only within the closed community of subscribers, the system, and a bank. Adams does
10 not teach any communication with members of the public about anything.

For the reasons set forth above and in the Brief, reversal is requested.

The sixth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **sixth** issue on appeal is whether Adams suffices to justify rejection of claim 170 under 35 USC 102, despite such claim's dependence upon claim 169.

As discussed above and in the Brief, Adams is not sufficient to justify rejection of claim 169. Thus, Adams is not sufficient to justify rejection of dependent claim 170.

For the reasons set forth above and in the Brief, reversal is requested.

20 **The seventh issue on appeal.** The Examiner's Answer at page 2 item 6 admits that the **seventh** issue on appeal is whether Adams suffices to justify rejection of claim 171 under 35 USC 102 despite: (a) Adams's failure to disclose (a-1) not responding to a request until after an event occurs.

For the reasons set forth above and in the Brief, reversal is requested.

The eighth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **eighth** issue on appeal is whether Adams suffices to justify rejection of claim 174 under 35 USC 102, despite such claim's dependence upon claim 173.

As discussed above and in the Brief, Adams is not sufficient to justify rejection of
30 claim 173. Thus, Adams is not sufficient to justify rejection of dependent claim 174.

For the reasons set forth above and in the Brief, reversal is requested.

The ninth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the ninth issue on appeal is whether Adams suffices to justify rejection of claims 179 and 181 under 35 USC 102 despite: (a) Adams's failure to disclose (a-1) publishing anything and (a-2) "publishing, in a manner that permits receipt and use by members of the public with no right to receive nonpublic information about the first offer, a data packet that comprises ..." a first offer identifier and a data item about a first offer; and (b) Adams's teaching away from (b-1) publishing anything "in a manner that permits receipt and use by members of the public with no right to receive nonpublic information ...".

(a-1) Adams fails to disclose publishing anything.

10 In the Final Office Action at page 4 lines 21-22 and in the Examiner's Answer at page 6, the Examiner asserts that "Adams further teaches publishing the information (col. 12, lines 51-62)." However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning publishing any information. Adams at column 12 lines 51-62 discusses sending data that summarizes a days trading transactions to a printer/receiving unit located in a bank to enable the bank to "perform the necessary financial dealings associated with each transaction".

20 In the Final Office Action at page 12 paragraph 16 the Examiner asserts that printing information regarding matched offers at a bank to enable the bank to "perform the necessary financial dealings associated with each transaction" constitutes disclosure by Adams of "publishing" the information printed at the bank. To support this position, the Examiner ignores the Examiner's own prior inconsistent (and incorrect) position that Adams teaches absolute anonymity and stretches the definition of publish beyond recognition. Few people other than the Examiner would think that printing information on a printer located in a bank constitutes publishing in the context of Adams invention where a major object of the invention is to prevent subscribers from learning the identity of the other subscribers with whom they are trading.

In the Examiner's Answer at page 14, the Examiner once again tries almost the same argument, with a few new, but unconvincing, twists.

30 As admitted by the Examiner, the ninth issue on appeal concerns "publishing, in a manner that permits receipt and use by members of the public

with no right to receive nonpublic information...”. Consequently, it is unhelpful and unnecessarily confusing for the Examiner to use the word “publishing” to refer to printing an end of day summary at a bank in the context of Adam’s invention where a major object of the invention is to prevent subscribers from learning the identity of the other subscribers with whom they are trading.

Appellant admits that printing information at a bank makes such information known to the bank, but Appellant rejects any inference that printing at a bank in the context of Adam’s invention constitutes “publishing” as such word is used in claims 179 and 181.

10 In the Examiner’s answer at Page 14, the Examiner asserts, without even pretending to cite any specific disclosure in Adams, that “... the bank becomes a member of the public for which the information is distributed and made public.” However, the Examiner cites no language in Adams which discloses that the bank that clears trades among traders of Adams’ invention is a member of the public with no right to receive nonpublic information, which the Examiner has admitted is an element of the ninth issue on appeal. It is not surprising that the Examiner fails to cite any such disclosure in Adams, because a material goal of Adams’ invention is to limit the disclosure of information to traders, much less to members of the public.

20 According to Merriam-Webster’s Collegiate Dictionary on line (available at <http://www.m-w.com/> as of 2001.10.28), the word “publish”, when used in the transitive sense as it is in claims 179 and 181, means: 1a: to make generally known; 1b: to make public announcement of; 2a: to disseminate to the public; 2b: to produce or release for distribution; specifically: PRINT; 2c: to issue the work of (an author). While definition 2b does suggest that "publish" can be used to refer to printing and releasing printed works for distribution, that definition (and common use of the English language) in no way suggests (as the Examiner has) that all printing constitutes publishing of the information that is printed.

(a-2) Claims 179 and 181 both require "publishing, in a manner that permits receipt and use by members of the public with no right to receive nonpublic
30 information about the first offer, a data packet that comprises ..." a first offer identifier and a data item about a first offer. Adams does not disclose, and the Examiner does not

even specifically assert that Adams does disclose, publishing such information in such manner.

(b) As discussed at greater length in the Brief, Adams teaches away from publishing anything "in a manner that permits receipt and use by members of the public with no right to receive nonpublic information ..." in the following ways:

(b-1-i) Adams teaches that "... the system records internally the senders and receivers of all messages and classifies these senders and receivers by code numbers." See column 9 lines 53-61.

10 (b-1-ii) Adams teaches the use of "... an authorized subscriber code which allows the system to identify an authorized user of the system." See column 12 lines 18-20.

(b-1-iii) Adams teaches that "... security passwords corresponding to each subscriber are also stored in the subscriber file and are accessible by the system and authorized persons at the subscriber installation location". See column 6 lines 35-38.

(b-1-iv) Adams teaches using the SIGN ON OR OFF key "... whenever the subscriber installation ... is to be unused for an extended period of time or when a different individual becomes the operator of the subscriber installation." See column 5 lines 65-68.

20 (b-1-v) Adams teaches that communications about offers are made only within the closed community of subscribers, the system, and a bank. Adams does not teach any communication with members of the public about anything.

For the reasons set forth above and in the Brief, reversal is requested.

The tenth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **tenth** issue on appeal is whether Adams suffices to justify rejection of claim 184 under 35 USC 102 despite: (a) Adams's failure to disclose (a-1) storing in the offer matching system an association among a first participant and a first monitor, where the first monitor is not the first participant, (a-2) receiving a message from the first monitor that approves a first offer, (a-3) until receiving the message of approval, refusing to execute
30 the first offer against any other offer, and (a-4) after receiving the message of approval, executing the first offer at least in part against a second offer; and (b) Adams's teaching

away from waiting for an approval before executing a first offer against a second offer when the first offer is capable of being executed against the second offer

(a) Adams fails to disclose elements of claim 184.

(a-1) Adams fails to disclose storing in the offer matching system an association among a first participant and a first monitor as required by claim 184 step (a). In the Final Office Action at pages 5 lines 1-2 and in the Examiner's Answer at page 6, the Examiner asserts that "... Adams further teaches the offer matching system monitoring the trade (col. 2, lines 73 - col. 3, lines 1-10)." However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning storing in the offer matching system an association among a first participant and a first monitor. The Appellant has been unable to locate in the Final Office Action or the Examiner's Answer any response to the Appellant's earlier request that the Examiner specifically point out where the Examiner believes Adams discloses storing in the offer matching system an association among a first participant and a first monitor.

(a-2) Adams fails to disclose receiving a message from the first monitor that approves a first offer as required by claim 184 step (d). Appellant has carefully read the portions of Adams cited by the Examiner in the Final Office Action at page 5 lines 1-2 and Examiner's Answer at page 6. Appellant has been unable to locate any disclosure therein concerning receiving a message from a first monitor that approves a first offer.

(a-3) Adams fails to disclose refusing to execute the first offer against any other offer until receiving the message of approval as required by claim 184 step (e). Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning refusing to execute an offer until a message of approval is received.

(a-4) Adams fails to disclose executing the first offer at least in part against a second offer after receiving the message of approval from a monitor, as required by claim 184 step (f). Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning executing an offer only after a message of approval is received.

(b) By accepting Appellant's statement of the tenth issue on appeal, the Examiner has admitted that Adams teaches away from the following elements of claim 184:

(b-1) Adams teaches away from waiting for an approval before executing a first offer against a second offer when the first offer is capable of being executed against the second offer. To the contrary, Adams teaches that when a first offer submitted using the "Book" or "Book and Broadcast" function is capable of being executed against a second offer already entered in the applicable book, then the first offer should be immediately executed against the second offer, without waiting for any sort of approval message from anyone. See the detailed description of the "Book" and "Book and Broadcast" function in Adams at column 15 line 69 - column 19 line 72.

For the reasons set forth above and in the Brief, reversal is requested.

The eleventh issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **eleventh** issue on appeal is whether Adams suffices to justify rejection of claim 180 under 35 USC 103(a) despite: (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in the art would do

(c) Despite Appellant's earlier request and the presence of this argument in the Brief, the Examiner has still failed to state any basis for concluding that it would have been obvious at the time of Appellant's invention for one skilled in the art to modify Adams to include, in combination, all of the following elements of claims 180 and 179 (from which claim 180 depends) that are missing from Adams: (a-1) sending or receiving a request that includes an identifier associated with an offer, (a-2) sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer, (a-3) in response to such a request, sending a reply that comprises a data item that concerns the offer, and (a-4) selecting the data item from the options listed in claim 180.

Since the Examiner failed to respond to Appellant's request for a statement by the Examiner of the basis, if any, for the Examiner's view, Appellant argues that rejection for obviousness fails due to absence, in the Final Office Action, of any reasonable statement as to the basis for the views expressed in providing the elements

that are missing in the reference. See *In Re Alhert and Kruger*, 165 USPQ 418 (CCPA 1970).

For the reasons set forth above and in the Brief, reversal is requested.

The twelfth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **twelfth** issue on appeal is whether Adams suffices to justify rejection of claims 191, 192, 194, 195, 197-199 and 201-202 under 35 USC 103(a) despite: (a) Adams's failure to disclose (a-1) publishing anything; (b) Adams's teaching away from (b-1) publishing anything "in a manner that permits receipt and use by members of the public with no
10 right to receive nonpublic information ..."; and (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in the art would do.

(a) As the Examiner has admitted by accepting the Appellant's statement of the twelfth issue on appeal, Adams fails to disclose the following elements of claims 191, 192, 194, 195, 197-199 and 201-202.

(a-1) Adams fails to disclose publishing anything. In the Final Office Action at the bottom of page 5 and in the Examiner's Answer at the top of page 7, the Examiner asserts that Adams discloses "... publishing a first data packet that comprises the first identifier and a first data item, the first data item concerning the first offer (col. 12, lines 51-62)." However, as mentioned in the Brief, Appellant has carefully read the
20 portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning publishing any information. Please see the more extensive discussion of this point that is set forth above for the ninth issue at (a-1).

(a-2) Adams fails to disclose "publishing, in a manner that permits receipt and use by members of the public with no right to receive nonpublic information about the first offer, a data packet that comprises ..." a first offer identifier and a data item about a first offer. Please see the discussion of this point that is set forth above for the ninth issue at (a-2).

(b) As the Examiner has admitted by accepting the Appellant's statement of the twelfth issue on appeal, Adams teaches away from the following elements of claims
30 191, 192, 194, 195, 197-199 and 201-202:

(b-1) Adams teaches away from publishing anything "in a manner that permits receipt and use by members of the public with no right to receive nonpublic information ...". Please see the more extensive discussion of this point that is set forth above for the ninth issue at (b-1).

10 (c) Despite Appellant's previous request and the presence of this argument in the Brief, the Examiner has failed to state any basis for concluding that it would have been obvious at the time of Appellant's invention for one skilled in the art to modify Adams to include, in combination, all of the elements of claims 191, 192, 194, 195, 197-199 and 201-202 that are missing from Adams, including, inter alia: (a-1) publishing, in a manner that permits receipt and use by members of the public with no right to receive nonpublic information about the first offer, a data packet that comprises a first offer identifier and a data item about a first offer. Since the Examiner has failed to respond to Appellant's request for a statement by the Examiner of the basis, if any, for the Examiner's view, Appellant argues that rejection for obviousness fails due to absence, in the Final Office Action, of any reasonable statement as to the basis for the views expressed in providing the elements that are missing in the reference. See *In Re Alhert and Kruger*, 165 USPQ 418 (CCPA 1970).

For the reasons set forth above and in the Brief, reversal is requested.

20 **The thirteenth issue on appeal.** The Examiner's Answer at page 2 item 6 admits that the **thirteenth** issue on appeal is whether Adams suffices to justify rejection of claim 193 under 35 USC 103(a) despite: (a) Adams's failure to disclose (a-1) publishing anything, (a-2) publishing a data packet that comprises a first identifier and a first data item that concerns a first offer, and (a-3) a predetermined relationship between the first data item and a second offer; (b) Adams's teaching away from (b-1) publishing anything; and (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in the art would do.

30 Claim 193 is dependent upon claim 191. As discussed above, Adams is not sufficient to justify rejection of claim 191. Thus, Adams is not sufficient to justify rejection of dependent claim 193.

(a) As the Examiner has admitted by accepting Appellant's statement of the thirteenth issue on appeal, Adams fails to disclose elements of claim 193.

(a-1) Adams fails to disclose publishing anything as required by step (f) of claim 191 from which claim 193 is dependent. In the Final Office Action at the bottom of page 5 and in the Examiner's Answer at the top of page 7, the Examiner asserts that Adams discloses "... publishing a first data packet that comprises the first identifier and a first data item, the first data item concerning the first offer (col. 12, lines 51-62)." However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning publishing any information.

10 Please see the more extensive discussion of this point that is set forth above for the ninth issue at (a-1).

(a-2) Adams fails to disclose publishing a data packet that comprises a first identifier and a first data item that concerns the first offer as required by step (f) of claim 191 from which claim 193 is dependent. Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning publishing any data packet. The Examiner failed to respond to Appellant's request that the Examiner more particularly identify which element(s) of Adams correspond to this element of claim 191 upon which claim 193 depends.

20 (a-3) Adams fails to disclose a predetermined relationship between the first data item and a second offer. In the Final Office Action at page 13 paragraph 18 and in the Examiner's Answer at page 15, the Examiner appears to admit that Adams fails to disclose this element of claim 191 before stating (without citing any prior art) that it would have been obvious at the time of Appellant's invention to add this element of claim 193 to Adams.

(b) As the Examiner has admitted by accepting Appellant's statement of the thirteenth issue on appeal, Adams teaches away from the following elements of claim 193:

(b-1) Adams teaches away from publishing anything. Please see the more extensive discussion of this point that is set forth above for the ninth issue at (b-1).

30 (c) Despite Appellant's previous request, the Examiner has failed to state any basis for concluding that it would have been obvious at the time of Appellant's invention

for one skilled in the art to modify Adams to include, in combination, all of the elements of claim 193 that are missing from Adams, including, inter alia: (a-1) publishing anything; (a-2) publishing a data packet that comprises a first identifier and a first data item that concerns the first offer, and (a-3) a predetermined relationship between the first data item and a second offer. Since the Examiner has failed to respond to Appellant's request for a statement by the Examiner of the basis, if any, for the Examiner's view, Appellant argues that rejection for obviousness fails due to absence, in the Final Office Action, of any reasonable statement as to the basis for the views expressed in providing the elements that are missing in the reference. See *In Re Alhert and Kruger*, 165 USPQ 418 (CCPA 1970).

For the reasons set forth above and in the Brief, reversal is requested.

The fourteenth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the **fourteenth** issue on appeal is whether Adams suffices to justify rejection of claim 200 under 35 USC 103(a) despite: (a) Adams's failure to disclose (a-1) publishing anything, (a-2) publishing a data packet that comprises a first identifier and a first data item that concerns an execution of the first offer, and (a-3) a predetermined relationship between the first data item and the first offer; (b) Adams's teaching away from (b-1) publishing anything; and (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in the art would do.

Claim 200 is dependent upon claim 197. As discussed above, Adams is not sufficient to justify rejection of claim 197. Thus, Adams is not sufficient to justify rejection of dependent claim 200.

(a) As the Examiner has admitted by accepting Appellant's statement of the fourteenth issue on appeal, Adams fails to disclose elements of claim 200.

(a-1) Adams fails to disclose publishing anything, as required by Claim 197 upon which claim 200 depends. In the Final Office Action at the bottom of page 5 and in the Examiner's Answer at the top of page 7, the Examiner asserts that Adams discloses "... publishing a first data packet that comprises the first identifier and a first data item, the first data item concerning the first offer (col. 12, lines 51-62)." However, Appellant has carefully read the portions of Adams cited by the Examiner and has been

unable to locate any disclosure therein concerning publishing any information. Please see the more extensive discussion of this point that is set forth above for the ninth issue at (a-1).

(a-2) Adams fails to disclose publishing a data packet that comprises a first identifier associated with a first offer and a first data item that concerns an execution of the first offer against the second offer as required by claim 197 step (f). The Examiner did not responded to Appellant's request that the Examiner more particularly identify which elements of Adams correspond to this element of claim 197 upon which claim 200 depends.

10 In the Final Office Action at page 6 line 16 - page 7 line 1 and the Examiner's Answer at pages 7 and 8, the Examiner discusses publishing the price and location when a home is sold. However, the location of a home identifies the home, not a particular offer to buy or to sell the home. Consequently, the prior art mentioned by the Examiner is irrelevant to step (f) of claim 197 upon which claim 200 depends. If the Examiner had cited prior art that discloses publishing a report of a home sale that includes an identifier associated with a particular offer to buy or to sell the house (as opposed to an identifier associated with the house), that might have been relevant to step (f) of claim 197.

20 (a-3) Adams fails to disclose a predetermined relationship between the first data item and the first offer as required by claim 200. The Examiner has not disputed this assertion by Appellant.

(b) As the Examiner has admitted by accepting Appellant's statement of the fourteenth issue on appeal, Adams teaches away from the following element of claim 200:

(b-1) Adams teaches away from publishing anything. Please see the more extensive discussion of this point that is set forth above for the ninth issue at (b-1).

30 (c) Despite Appellant's previous request, the Examiner has failed to state any basis for concluding that it would have been obvious at the time of Appellant's invention for one skilled in the art to modify Adams to include, in combination, all of the elements of claim 200 that are missing from Adams, including, inter alia: (a-1) publishing anything; (a-2) publishing a data packet that comprises a first identifier and a first data

item that concerns an execution of the first offer, and (a-3) a predetermined relationship between the first data item and the first offer. Since the Examiner has failed to respond to Appellant's request for a statement by the Examiner of the basis, if any, for the Examiner's view, Appellant argues that rejection for obviousness fails due to absence, in the Final Office Action, of any reasonable statement as to the basis for the views expressed in providing the elements that are missing in the reference. See *In Re Alhert and Kruger*, 165 USPQ 418 (CCPA 1970).

For the reasons set forth above and in the Brief, reversal is requested.

10 **The fifteenth issue on appeal.** The Examiner's Answer at page 2 item 6 admits that the **fifteenth** issue on appeal is whether Adams suffices to justify rejection of claim 203 under 35 USC 103(a) despite: (a) Adams's failure to disclose (a-1) storing in the offer matching system an association among a first participant and a first monitor, (a-2) receiving a message that approves a first offer, (a-3) determining that the message is from the first monitor, (a-4) before determining that the message is from the first monitor, refusing to execute the first offer against any other offer, and (a-5) after determining that the message is from the first monitor, executing the first offer at least in part against a second offer; (b) Adams's teaching away from (b-1) waiting for an approval before executing a first offer against a second offer when the first offer is capable of being
20 executed against the second offer; and (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in the art would do.

(a) As the Examiner has admitted by accepting Appellant's statement of the fifteenth issue on appeal, Adams fails to disclose elements of claim 203.

(a-1) Adams fails to disclose storing in the offer matching system an association among a first participant and a first monitor as required by claim 203 step (a). In the Final Office Action at page 7 and the Examiner's Answer at page 6, the Examiner asserts that "... Adams further teaches storing in the offer matching system a first association among a first participant and a first monitor (col. 2, lines 73-, col. 3, lines 1-10)." However, Appellant has carefully read the portions of Adams cited by the
30 Examiner and has been unable to locate any disclosure therein concerning storing in the offer matching system an association among a first participant and a first monitor. The

Examiner did not respond to Appellant's request that the Examiner more specifically identify where the Examiner believes this element of claim 203 is disclosed in Adams and specifically which element(s) of Adams's invention the Examiner believes correspond(s) to the first monitor of claim 203.

10 (a-2) Adams fails to disclose receiving a message that approves a first offer, as required by claim 203 step (e). Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning receiving a message from anyone that approves a first offer. The Examiner did not responded to Appellant's request that the Examiner more specifically identify where the Examiner believes this element of claim 203 is disclosed in Adams and specifically which element(s) of Adams's invention the Examiner believes correspond(s) to such message of claim 203.

(a-3) Adams fails to disclose determining that the message is from the first monitor, as required by claim 203 step (f). Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning making such a determination. The Examiner did not respond to Appellant's request that the Examiner more specifically identify where the Examiner believes this element of claim 203 is disclosed in Adams.

20 (a-4) Adams fails to disclose refusing to execute the first offer against any other offer until determining that the message is from the first monitor, as required by claim 203 step (g). Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning refusing to execute an offer until making such a determination. The Examiner did not respond to Appellant's request that the Examiner more specifically identify where the Examiner believes this element of claim 203 is disclosed in Adams.

30 (a-5) Adams fails to disclose executing the first offer at least in part against a second offer after determining that the message is from the first monitor, as required by claim 203 step (h). Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning executing an offer after making such a determination. The Examiner did not respond to

Appellant's request that the Examiner more specifically identify where the Examiner believes this element of claim 203 is disclosed in Adams.

(b) As the Examiner has admitted by accepting Appellant's statement of the fifteenth issue on appeal, Adams teaches away from the following elements of claim 203:

(b-1) Adams teaches away from waiting for an approval before executing a first offer against a second offer when the first offer is capable of being executed against the second offer. To the contrary, Adams teaches that when a first offer submitted using the "Book" or "Book and Broadcast" function is capable of being executed against a second offer already entered in the applicable book, then the first offer should be immediately executed against the second offer, without waiting for any sort of approval message from anyone. See the detailed description of the "Book" and "Book and Broadcast" function in Adams at column 15 line 69 - column 19 line 72.

(c) Despite Appellant's previous request, the Examiner has failed to state any basis for concluding that it would have been obvious at the time of Appellant's invention for one skilled in the art to modify Adams to include, in combination, all of the elements of claim 203 that are missing from Adams, including, inter alia: (a-1) storing in the offer matching system an association among a first participant and a first monitor, (a-2) receiving a message that approves a first offer, (a-3) determining that the message is from the first monitor, (a-4) before determining that the message is from the first monitor, refusing to execute the first offer against any other offer, and (a-5) after determining that the message is from the first monitor, executing the first offer at least in part against a second offer. Since the Examiner has failed to respond to Appellant's request for a statement by the Examiner of the basis, if any, for the Examiner's view, Appellant argues that rejection for obviousness fails due to absence, in the Final Office Action, of any reasonable statement as to the basis for the views expressed in providing the elements that are missing in the reference. See *In Re Alhert and Kruger*, 165 USPQ 418 (CCPA 1970).

For the reasons set forth above and in the Brief, reversal is requested.

The sixteenth issue on appeal. The Examiner's Answer at page 2 item 6 admits that the sixteenth issue on appeal is whether Adams in view of Hauser et al. (WO 97/25801

hereinafter Hauser) suffices to justify rejection of claims 177-178 under 35 USC 103(a) despite: (a) Adams's failure to disclose (a-1) receiving a request that includes a first identifier associated with a first offer, (a-2) in response to such request, sending a reply that comprises a data item that concerns the first offer, (a-3) in response to such request, sending a reply that comprises a digital signature, and (a-4) sending the response in a manner that is secured without relying upon the digital signature; (b) Adams's teaching away from (b-1) using a query/response protocol to communicate information about a particular offer; and (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in the art would do.

10 Furthermore, (d) Hauser fails to disclose (d-1) receiving a request that includes a first identifier associated with a first offer, (d-2) in response to such request, sending a reply that comprises a data item that concerns the first offer, (d-3) in response to such request, sending a reply that comprises a digital signature, and (d-4) sending the response in a manner that is secured without relying upon the digital signature.

 (a-1) As the Examiner has admitted by accepting Appellant's statement of the sixteenth issue on appeal, Adams fails to disclose receiving a request that includes a first identifier associated with a first offer. In the Final Office Action at page 4 lines 4-5 and in the Examiner's Answer at page 5, the Examiner asserts that Adams, at column 10 lines 1-15 and column 12 lines 1-9, teaches "receiving request for information where
20 the request includes the first identifier". However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning a request that includes an identifier associated with an offer.

 In reviewing the portions of Adams cited by the Examiner, it is important to note that when Adams speaks of a "Reply", he is speaking of a counter-offer that is entered into an offer matching system by a subscriber to that system. Adams is not speaking of a reply by an offer matching system to a request for information that includes an identifier associated with an offer. Consequently, Adams's specialized use of the term "Reply" should not be understood to imply any sort of underlying request to an offer matching system.

30 Please see the more extensive discussion of this point above at the fifth issue (a-1).

(a-2) Adams fails to disclose in response to such a request, sending a reply that comprises a data item that concerns the first offer. In the Final Office Action at page 4 lines 7-9 and in the Examiner's Answer at page 5, the Examiner asserts that Adams, at column 10 lines 1-36 and column 12 lines 1-12, discloses "in response to the request, sending a reply comprising a data item that concerns the first offer." However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning any sort of response to a request (as distinguished from a counter-offer in response to a prior offer or counter-offer).

10 The Examiner did not respond to Appellant's request that the Examiner more particularly identify where Adams discloses a response to a request (as opposed to a response to an offer) and more particularly identify which aspect of Adams's invention the Examiner believes correspond to which aspects of Appellant's invention.

(a-3) Adams fails to disclose in response to such request, sending a reply that comprises a digital signature. The Examiner further reinforces this conclusion by relying upon Hauser to make this rejection.

(a-4) Adams fails to disclose sending the response in a manner that is secured without relying upon the digital signature.

20 The Examiner has cited nothing in Adams or Hauser that discloses this requirement of claim 177 step (c)(2) or claim 178 element (c)(2). The Examiner did not respond to Appellant's request that the Examiner identify where either Adams or Hauser discloses this element.

The Examiner in essence argues against combining Adams and Hauser when the Examiner takes the position that it would be nonsensical to use both a digital signature (as Adams does not disclose but Hauser does disclose) and a method for securing communications that does not use digital signatures (as Adams does disclose in the form of passwords, etc.).

30 Appellant respectfully submits that it is illogical to simultaneously argue, as the Examiner does, both (1) that it is confusing to the point of being meaningless to combine a digital signature with an independent method of securing a message and (2) it would have been obvious at the time of Appellant's invention to

combine Hauser's digital signatures with Adams' independent methods for securing messages and ensuring that traders would not learn each others' names.

(b) As the Examiner has admitted by accepting Appellant's statement of the sixteenth issue on appeal, Adams teaches away from the following elements of claims 177-178:

(b-1) Adams teaches away from using a query/response protocol to communicate information about an identified offer. To the contrary, Adams teaches that information about an offer should either be:

10 broadcast to all or selected subscribers, see for example the detailed description of the "Book and Broadcast" function at column 15 line 69 - column 19 line 72; or

obtained in response to a "Book Print" command which is not specific to a particular order but rather prints descriptions of all open orders for a particular traded item, see the detailed description of the "Book Print" function at column 13 line 7 - column 15 line 7.

(c) Despite Appellant's previous request, the Examiner has failed to state any basis for concluding that it would have been obvious at the time of Appellant's invention for one skilled in the art to modify Adams to include, in combination, all of the elements of claims 177-178 that are missing from Adams, including, inter alia: (a-1) receiving a
20 request that includes a first identifier associated with a first offer, (a-2) in response to such request, sending a reply that comprises a data item that concerns the first offer, (a-3) in response to such request, sending a reply that comprises a digital signature, and (a-4) sending the response in a manner that is secured without relying upon the digital signature. Since the Examiner has failed to respond to Appellant's request for a statement by the Examiner of the basis, if any, for the Examiner's view, Appellant argues that rejection for obviousness fails due to absence, in the Final Office Action, of any reasonable statement as to the basis for the views expressed in providing the elements that are missing in the reference. See *In Re Alhert and Kruger*, 165 USPQ 418 (CCPA 1970).

30 (d) Hauser fails to disclose the following elements of claims 177 and 178: (d-1) receiving a request that includes a first identifier associated with a first offer, (d-2) in

response to such request, sending a reply that comprises a data item that concerns the first offer, (d-3) in response to such request, sending a reply that comprises a digital signature, and (d-4) sending the response in a manner that is secured without relying upon the digital signature.

Since elements of claims 177 and 178 are not disclosed in either of the cited references, even if it were appropriate to combine the references, the combination of the cited references would still fail to disclose elements of claims 177 and 178.

For the reasons set forth above and in the Brief, reversal is requested.

10

New Matter In Examiner's Answer

n.1. In the Examiner's Answer at page 9, first paragraph under the heading "(11) Response to Argument" the Examiner merely incorporated a copy of text that was in the Final Office Action, so Appellant has nothing further to say about it.

n.2. In the Examiner's Answer at pages 9-12, the Examiner has extensively revised the Examiner's discussion of Section 35 USC 101 and related case law. Appellant has addressed the substance of these changes in the discussion above of the second issue on appeal.

20 n.3. In the Examiner's Answer at page 12, last paragraph, the Examiner added language about "another embodiment". Appellant has already addressed this change in the discussion above of the third issue on appeal.

n.4. In the Examiner's Answer at page 13, first paragraph, the Examiner has inserted a revised copy of the Final Office Action at pages 11-12, paragraph 13. Appellant is not certain which of the sixteen issues on appeal the Examiner intended to address with this revised language. However, Appellant offers the following observations:

30 n.4.1. At page 13, line 1 of the Examiner's Answer, the Examiner asserts that Appellant on page 20 of the Brief admits that the identifier "20,256" was given to Subscriber A in order to identify his or her offer. Appellant has examined the sixteen issues on appeal, and whether or not Adams discloses associating the identifier "20562" with a Subscriber A's original offer is not an issue on appeal.

n.4.2. At page 13, line 5 of the Examiner's Answer, the Examiner asserts, without citing any language in Adams, that "therefore Subscriber B will have to use the same identifier to request information on the identified offer." The reason that the Examiner fails to cite any language in Adams suggesting that Subscriber B use the same identifier to request information on the identified offer is that Adams teaches away from having a Subscriber B request information about a particular offer. To the contrary, Adams teaches that information about an offer should either be: broadcast to all or selected subscribers, see for example the detailed description of the "Book and Broadcast" function at column 15 line 69 - column 19 line 72; or obtained in response to a "Book Print" command which is not specific to a particular order but rather prints descriptions of all open orders for a particular traded item, see the detailed description of the "Book Print" function at column 13 line 7 - column 15 line 7. Please see the discussion of the fifth issue on appeal in the Brief and above at (a-1) for a more extensive discussion of Adam's failure to disclose sending or receiving a request that includes an identifier associated with an offer and at (b-1) for a more extensive discussion of Adams's teaching away from using a query/response protocol to communicate information about a particular offer.

n.4.3. At page 13, line 6 of the Examiner's Answer, the Examiner asserts, without citing any language in Adams, that in the context of Adams's invention, "[a] counter offer is a request or a return offer." [emphasis added] The reason that the Examiner fails to cite any language supporting the assertion that a counter offer is a request for information about the initial offer is that Adams not only fails to disclose, but actually teaches away from, using a query/response protocol to communicate information about a particular offer. Please see the discussion of the fifth issue on appeal in the Brief and above at (a-1) for a more extensive discussion of Adam's failure to disclose sending or receiving a request that includes an identifier associated with an offer and at (b-1) for a more extensive discussion of Adams's teaching away from using a query/response protocol to communicate information about a particular offer. Appellant fails to understand how a counter offer's being a return offer is relevant to any of the sixteen issues on appeal.

n.5. At page 13 lines 1-10 of the Examiner's Answer, the Examiner introduces a new paragraph that is discussed above in the context of the fifth issue on appeal.

n.6. At page 13 lines 11-21 of the Examiner's Answer, the Examiner has inserted a modified version of the Final Office Action at paragraph 14. The Examiner has not seen fit to explain which issue on appeal is addressed by the new material introduced in the Examiner's Answer, so it is difficult for Appellant to respond to this new text.

10 n.7. At page 13 lines 13-18 the Examiner falsely states that Appellant has admitted to several incorrect assertions made by the Examiner. What Appellant actually said on pages 22-24 of the brief concerning sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer is:

(a-2) Adams fails to disclose sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer.

20 (a-2-1) In the Office Action at page 4, the Examiner asserts that Adams, at column 12 lines 1-9, discloses "the request is received in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the first offer". However, Appellant has carefully read the portions of Adams cited by the Examiner and has been unable to locate any disclosure therein concerning communications with persons not known to be entitled to receive nonpublic information.

30 When Adams speaks at column 12 lines 2-3 of "anonymity among the various subscribers", Adams means that no subscriber knows which other subscriber entered a particular offer or counter-offer into the offer matching system. Adams does not mean that the offer matching system does not know which subscriber entered and is responsible for each offer or counter-offer entered into the offer matching system. As support for this interpretation of Adams's use of the term "anonymity", see Adams at, inter alia:

column 1 lines 26-27 (motivation for Adams's invention included requirement for "... a device which would provide the institutional investors and other traders anonymity and confidentiality when they communicated with each other ..." [emphasis added]);

column 5 lines 65-68 (SIGN ON OR OFF key for use "... whenever the subscriber installation ... is to be unused for an extended period of time or when a different individual becomes the operator of the subscriber installation.");

10 column 6 lines 35-38 ("Furthermore, security passwords corresponding to each subscriber are also stored in the subscriber file and are accessible by the system and authorized persons at the subscriber installation location");

column 9 lines 53-61 ("In general, a Reply is a direct communication to one or more subscribers. The subscribers involved are always completely anonymous to one another, since the system records internally the senders and receivers of all messages and classifies these senders and receivers by code numbers. A subscriber refers only to a reply number or an offer number printed on a message he receives and the system sends his reply to the originator of the message to which he is replying."); and

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column 12 lines 18-20 ("In addition to these reference numbers the system also utilizes an authorized subscriber code which allows the system to identify an authorized user of the system.")

(a-2-2) In the Office Action at page 12 paragraph 14, the Examiner asserts that Adams at column 1 lines 44-47 teaches "it is an object of the invention to provide an apparatus and method of automatically, anonymously and equitable buying and selling fungible properties between subscribers" [emphasis added]. Appellant respectfully submits that the phrase "between subscribers" modifies each of

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subscriber code which allows the system to identify an authorized user of the system.")

(a-2-3) In the Office action at page 12 paragraph 14, the Examiner asserts that Adams at column 3 line 9 recites "absolute anonymity is maintained". However, the full sentence in Adams at column 3 lines 6-9 is "As is true with every subprogram within the system, every message is fully documented by being produced simultaneously on the printer/receiving unit of both subscribers and absolute anonymity is maintained". Appellant admits that Adams at column 3 lines 6-9 teaches having a system print messages on the printer/receiving unit of two subscribers without disclosing to either subscriber the identity of the other subscriber. However, the actions described by Adams at column 3 lines 6-9 require as a matter of logic that the system (as opposed to the subscribers) know who both of the subscribers are so that the system can cause messages to be printed on the printer/receiving unit of "both subscribers". Furthermore, at column 12 lines 50-63 Adams teaches that the system sends a summary of the transactions within the system for a given day to a printer at a banking institution so that the bank can perform "the necessary financial dealings associated with each transaction." Which, as a matter of logic, the bank could not do unless the system both knows the identity of the subscribers [sic.] on the buy and sell sides of each trade and discloses those identities to the bank. Consequently, Adams at column 3 line 9 does NOT teach sending or receiving a request in a manner that does not imply that the request is from a person entitled to receive nonpublic information concerning the offer.

Appellant disputes the assertions set forth in the Examiner's Answer at page 13 lines 13-18.

n.9. At page 13 line 19 – page 14 line 6 of the Examiner's Answer the Examiner has inserted a new argument, but once again has not seen fit to identify which issue on appeal the Examiner wishes to address with this new argument. Because

Appellant has been unable to divine which issue on appeal, or even which claims, the Examiner wished to address with this particular argument, Appellant is at a loss to know how to respond. Once again, the details are important. For example, if the Examiner intended to discuss claim 171 (the first claim on appeal that includes the word “event”) in the context of the fifth issue on appeal, then the Examiner’s arguments would be unpersuasive for the following reasons:

n.9.1. Claim 171 requires that (i) the request comprises a requirement that a first event occur, the first event being selected from a specified group. As discussed above in the context of the fifth issue on appeal at (a-1), the Examiner appears to be taking the bizarre position that when an originating Subscriber enters an offer into Adams’s system, a request for information is being received. The Examiner has cited no language in Adams that discloses an original Subscriber including in an offer a requirement that a first event occur. Consequently, the Examiner has suggested nothing in Adams that would correspond to the requirement of Claim 171 clause (i).

n.9.2. Claim 171 requires that (ii) step (c) of claim 169 (i.e., sending the response) is not performed until after the first event occurs. The language from Adams quoted by the Examiner at page 14 lines 1-6 does not disclose anything (much less a response to a request that satisfies the requirements of claims 169 and 171) being delayed until an event specified in the original offer occurs.

n.9.3. Based on the foregoing, Appellant remains puzzled as to why the Examiner quoted Adams at column 10, lines 37-53.

n.10. At page 14 lines 7-16 of the Examiner’s Answer, the Examiner included a modified version of page 12 paragraph 16 from the Final Office Action. Appellant has already addressed this new language in detail above at the ninth issue on appeal at (a-1).

n.11. At page 14 line 17 – page 15 line 5 of the Examiner’s Answer, the Examiner has included a modified version of pages 12-13 paragraph 17 from the Final Office Action. Once again, the Examiner has not seen fit to identify which issue on appeal the Examiner wishes to address with this modified argument. The first claim on appeal that uses the word “monitor” is claim 184. As discussed in detail in the Brief and above for the tenth issue on appeal, there are multiple elements of claim 184 that Adams does not disclose and Adams teaches away from at least one element of claim 184. In

particular, and not by way of limitation, claim 184 requires that after receiving a message from the first monitor that approves the first offer the first offer is executed at least in part against the second offer. To the contrary, the portions of Adams quoted by the Examiner in the Examiner's Answer at page 15 lines 1-4 describe a means by which the system notifies a Subscriber that an offer below the minimum accepted by the system has been rejected, and provides no mechanism for the offer to later be executed after a monitor approves the rejected offer. Once again, the Examiner has become confused by failing carefully to think about how particular elements disclosed in Adams might map to the particular elements in particular claims.

10 n.12. At page 15 line 16 – page 16 line 4 of the Examiner's Answer, the Examiner has introduced new text. Once again, the Examiner has not seen fit to identify which issue on appeal the Examiner seeks to address with this new material. Although the creativity of the grammar in this new text makes it a bit difficult for the classically trained reader to decipher, it appears that the Examiner is continuing to try to combine (i) the well known art of publishing information about the price at which offers were matched and executed for real estate transactions with (ii) the well known art of confidentially communicating information to traders and clearing facilities that identifies particular offers and the price at which such identified offers were matched (and must now be cleared and settled). Appellant has attacked the suggested combination of
20 references on the following grounds: (i) neither reference discloses the particular element of publishing an offer identifier in association with a trade price report (so that the Examiner is not merely suggesting combining some elements from one check list with other elements from a different check list, but rather is suggesting transforming an element from one reference in a novel and non-obvious way that is not suggested by the second reference), (iii) Adams teaches away from publishing anything, which makes it hard to see why the Examiner thinks it would have been obvious to one skilled in the art at the time of Appellant's invention to combine Adams with the practice of publishing real estate prices in the manner suggested by the Examiner and (iv) the Examiner has
30 never provided any evidence supporting the Examiner's contention that it would have been obvious at the time of Appellant's invention for someone to combine a reference in the real estate price publishing art (which does not include identifying particular offers)

with a reference in the offer matching system art that teaches away from publishing anything.

n.13. At page 16 lines 5-9 of the Examiner's Answer, the Examiner has added new text concerning claim 177. Claim 177 is relevant to at least three of the issues on appeal: the second (section 101), the third (section 112) and the sixteenth (section 103(a)). Since at page 16 line 6 of the Examiner's Answer, the Examiner refers to "112, 2nd", Appellant has assumed that the Examiner was trying to make an argument with respect to the third issue on appeal, i.e., whether the Examiner is justified in rejecting claims 177 and 178 under 35 USC 112 despite the fact that both claims clearly require both a digital signature and additional security that does not rely upon the digital signature. (The Examiner's Answer at page 2 item 6 admits that this is a correct statement of the third issue on appeal). Appellant offers the following observations with respect to this new text:

n.13.1. At page 16 line 5 of the Examiner's answer, the Examiner uses the phrase "digital signature to secure the data". This phrase is not used anywhere in Claim 177 and does not appear in the agreed upon statement of the third issue on appeal. Consequently Appellant is unable to figure out either the grammar of the first set of words in this paragraph that is punctuated as though it is a sentence or its relevance to claim 177 or the third issue on appeal.

n.13.2. At page 16 line 5, the Examiner asserts that claim 177 is confusing. The apparently relevant portions of claim 177 are as follows:

...

(c) in response to the request, sending to a participant a reply that:

(1) comprises:

(A) a first data item that concerns the first offer,

and

(B) a digital signature from the system that is sufficient to permit a recipient of the reply to determine with reasonable certainty whether the reply was sent by the system and whether the reply has been altered after being sent by the system; and

(2) is sent to the participant in a manner that is secured without relying upon the digital signature.

Appellant continues to believe that, as reflected in the agreed upon statement of the third issue on appeal, claim 177 clearly requires "... both a digital signature and additional security that does not rely upon the digital signature." For example, a trading system could both digitally sign a response (in a manner that would prevent tampering by an intermediary but permit reading by an intermediary) and encrypt a message that includes both the response and such digital signature (thereby also preventing the intermediary from reading the response).

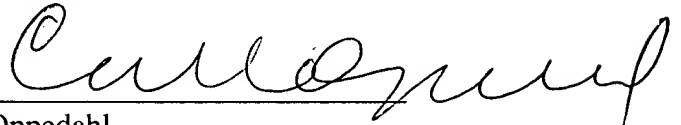
10 n.13.3. At page 16 lines 6-7 the Examiner states that the Examiner interprets claim 177 as requiring the digital signature to "secure" the data. Appellant contends that claim 177 very clearly explains what the digital signature is required to do, to wit: be "... sufficient to permit a recipient of the reply to determine with reasonable certainty whether the reply was sent by the system and whether the reply has been altered after being sent by the system ..." – precisely the sorts of things for which digital signatures as disclosed by Hauser are useful. Appellant is at a loss to understand how the Examiner's decision to interpret the digital signature of claim 177 as being required to do something not mentioned in claim 177 results in a failure of claim 177 to particularly point out and distinctly claim the subject matter which Appellant regards as the
20 invention.

n.13.4. At page 16, lines 7-9, the Examiner wanders off into a discussion of why Hauser was cited. Presumably this is an indirect reference to the sixteenth issue on appeal, which the Examiner has admitted is whether "... Adams in view of Hauser suffices to justify rejection of claims 177-178 under 35 USC 103(a) despite: (a) Adams's failure to disclose (a-1) receiving a request that includes a first identifier associated with a first offer, (a-2) in response to such request, sending a reply that comprises a data item that concerns the first offer, (a-3) in response to such request, sending a reply that comprises a digital signature, and (a-4) sending the response in a manner that is secured without relying upon the digital signature; (b) Adams's teaching away from (b-1) using a
30 query/response protocol to communicate information about a particular offer; and (c) the absence of any statement by the Examiner of the basis for a view as to what one skilled in

the art would do. Thus, even if it might have been obvious at the time of Appellant's invention to modify Adams to add digital signatures to the messages between Adams's subscribers and Adams's system, the combination of Adams and Hauser still would not disclose, among other things, (a-1) receiving a request that includes a first identifier associated with a first offer or (a-2) in response to such request, sending a reply that comprises a data item that concerns the first offer and Adams still would teach away from (b-1) using a query/response protocol to communicate information about a particular offer. See the discussion of the sixteenth issue on appeal above and in the Brief. To avoid any possible confusion, Appellant disputes that it is appropriate to combine these two references because (i) the Examiner has never provided any evidence as to why it would be reasonable to expect that one skilled in the relevant arts at the time of Appellant's invention would have combined the two references and (ii) the Examiner's own view that it is hopelessly confusing to try to think about combining digital signatures with a system of securing messages that does not use digital signatures (e.g., the system taught by Adams) argues against combining these two references.

For the reasons set forth above and in the Brief, reversal is requested for all sixteen issues on appeal.

Respectfully,



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